IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 399 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUSUDAN M PANDIT

Versus

STATE OF GUJARAT

Appearance:

MR KETAN A DAVE for Petitioner

MR UR BHATT AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/02/2001

ORAL JUDGEMENT

1. This is an appeal under Section 96 of the Civil Procedure Code, 1908 against the judgement and decree dated 27.1.1982 recorded by the learned Judge of the City

Civil Court at Ahmedabad being court No. 18 in Civil Suit No. : 1794/1979, under which, the learned Judge dismissed the said suit of the appellant - original plaintiff and directed the parties to bear their own costs in the suit.

2. The facts of the case may be briefly stated as follows :-

The appellant - original plaintiff had passed B.Sc. decree examination from the Gujarat University in First Class in the year 1967. Then he joined some services and according to him, he was appointed as a lecturer in the Democratic High School. The appellant original plaintiff also alleged before the Trial Court that he had a right to receive his salary in the pay scale of Rs. 700-40-1100-50-1600. The appellantoriginal plaintiff also alleged before the Trial Court that it appears to be a case of the respondent that on account of some mistake committed by the administration of the respondent herein, the appellant - original plaintiff was wrongly given salary in the aforesaid pay scale. So, on one hand the appellant - original plaintiff said that he was entitled to be placed in the aforesaid pay scale and on the other hand, the respondent - original defendant contended that the appellant - plaintiff was not entitled to the said pay scale. Therefore, the pay scale available to the appellant - plaintiff at relevant point of time was a subject matter dispute between the parties in the said suit.

3. Respondent herein submitted Written statement. After the issues were framed and after the parties were heard on merits, the learned Trial Judge came to a decision that the appellant - original plaintiff had failed to prove that he was appointed as a lecturer in the Democratic High School as alleged in the plaint. The trail Court also found that appellant - original plaintiff had failed to prove that he had a right to receive salary in the pay scale of Rs. 700- 1600. The trial Court also found that the respondent - original defendant successfully proved that as a result of mistake, the appellant original plaintiff was wrongly placed in the pay scale of Rs. 700-1600. Therefore, the trial Court concluded, that the appellant - original plaintiff was not entitled to the said pay scale and therefore, the suit was dismissed by the trial Court.

4. Feeling aggrieved by the said judgement and decree of the trial Court, the appellant has preferred this appeal before this Court. It has been mainly

contended that the trial court has failed to appreciate and consider the law and fact relevant to the case. The appellant has also contended that though he was entitled to the pay scale of RS. 700-1600, the same was wrongly and illegally denied. On the whole, according to the case of the appellant, the judgement and decree of the trial Court are illegal and erroneous and deserve to be set aside. The appellant has therefore prayed that the present appeal be allowed, the judgement and decree of the trial Court be set aside and the suit of the appellant - original plaintiff be decreed in terms of the reliefs prayed in the plaint.

5. On receiving the appeal, the same was admitted and Mr. U.R. Bhatt, learned AGP appears in response to the service of notice. I have heard Mr. H.M. Mehta with Mr. Ketan Dave for the appellant and Mr. U.R. Bhatt for the respondents. I have perused the papers.

6. During the course of arguments, learned senior advocate for the appellant has referred some Government Resolutions showing that the Government has subsequently issued Government Resolution showing that the appellant would be entitled to receive salary in the aforesaid pay scale of Rs. 700-1600 at the relevant point of time. It has also been submitted that the suit was disposed of in 1982 but thereafter, the Government had passed Resolution on 18.1.1989 deciding the revised pay scale for higher secondary school teachers at Rs. 1640-2900. It has also been submitted that the said Resolution was given retrospective effect from 1.1.1979. It was further contended that as per the said Government Resolution, the pay was required to be notoinally fixed between the period from 1.7.1979 to 31.12.1985. It was further contended that the actual payment of salary was required to be made in terms of the said Government Resolution dated 18.1.1989 with effect from 1.1.1986.

7. The learned Senior advocate appearing for the appellant Mr. H.M. Mehta has therefore contended that since the aforesaid resolution was passed by the respondents in 1989 after the suit was dismissed in 1982, it would be appropriate for the present appellant to submit appropriate representation to the Government for fixation of salary and for payment of his due in accordance with the government resolution dated 18.1.1989 and other resolutions, circulars or revision of pay scale etc. It has also contended by the learned senior advocate for the appellant that the appellant is ready and willing to make appropriate representation before the appropriate authority for appropriate consideration and

decision.

8. Now, it is pertinent to note that the resolution referred to by the learned senior advocate appearing for the appellant has been issued by the respondents in 1989 i.e. subsequent to the decision of the trial Court, which has come out in 1982. It is also pertinent to note that at least notional effect has been given to the said resolution from 1st July, 1979. This shows that the said resolution has far reaching effect and it would naturally apply even before the date of disposal of the suit of the appellant.

9. So, these are the subsequent events, which have come out after the suit was dismissed and before the appeal could be heard and disposed of. It is well settled that such subsequent events or developments may be appropriately considered by the Court of appeal while hearing and disposing the appeal.

10. Any way, when the resolutions have been issued after the dismissal of the suit, but during the pendency of the appeal and when its effect has been given from 1.7.1979 i.e. before the date of the dismissal of the suit, I think this is a fit case, wherein, appellant may submit an appropriate representation before the appropriate authority for appropriate consideration and decision.

11. Naturally and necessarily, if such a resolution is made, then the appropriate authority will consider the same in light of the Government resolution, circular or other guidelines for the purpose of fixation of the salary, extending the pay scale, issuing orders for payment or for notional fixation of the salary etc. After such consideration, the said authority would naturally be at liberty to dispose of the said representation in accordance with law.

12. I am of the view that request appears to be genuine, just and proper and therefore, it is required to be accepted.

13. In the aforesaid facts and circumstances of the case, it is directed that :-

(i) The appellant - original plaintiff will be at liberty to submit appropriate representation before the Director / Commissioner of Higher Education within 2 weeks with respect to the extension of

pay scale, or such other relief as he may deem fit and proper.

(ii) On receipt of such a representation, the Director / Commissioner of Higher Education shall consider and dispose of the same on merits and in accordance with law having regard to the aforesaid aspects referred hereinabove, as early as possible and preferably within 6 months from the date of receipt of the representation from the appellant original plaintiff.

(iii) It is made clear that if, the decision of the Director / Commissioner of Higher Education should not satisfy the present appellant - original plaintiff, then it may be open to the appellant - original plaintiff to move appropriate authority including Education Tribunal, if it is legally permitted to do so.

(iv) The Director / Commissioner of Higher Education shall dispose of the matter before him on merits according to law and without being influenced by the observations by the learned City Civil Court in the aforesaid civil Suit.

(v) It is made clear that this Court does not express any opinion with respect to the merits involved in the matter.

With these observations, this appeal stands disposed of with no order as to costs.

(D.P.Buch, J.)

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